

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-1124SI

United States of America,

Appellee,

v.

Hilario Avila,

Appellant.

*
* On Appeal from the United
* States District Court
* for the Southern District
* of Iowa.
*
* [Not To Be Published]
*
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Submitted: January 4, 2000

Filed: January 25, 2000

Before RICHARD S. ARNOLD, FLOYD R. GIBSON, and HANSEN, Circuit Judges.

PER CURIAM.

Hilario Avila appeals from the final judgment of the District Court¹ after he pleaded guilty to a one-count indictment for possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a). On appeal, counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), suggesting the District Court

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

erred in not granting Avila a downward departure, and in imposing a 2-level obstruction-of-justice enhancement.

We conclude the District Court's refusal to depart downward is unreviewable, because its statements, taken as a whole, indicate it was aware of its authority to depart downward and it exercised its discretion not to do so. See United States v. Knight, 96 F.3d 307, 311 (8th Cir. 1996). We further conclude the District Court did not err in imposing a 2-level sentencing enhancement for obstruction of justice, because Avila's fear for his safety does not excuse the fact that he eluded authorities for over a year. See U. S. Sentencing Guidelines Manual § 3C1.1 (1998); United States v. Taylor, 997 F.2d 1551, 1559-60 (D.C. Cir. 1993); United States v. Lyon, 959 F.2d 701, 707 (8th Cir. 1992).

In accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), we have reviewed the record for any nonfrivolous issues and have found none. We grant counsel's motion to withdraw.

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.